



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2011

Mr. Joe Gorfida, Jr.
For City of Sachse
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

OR2011-08055

Dear Mr. Gorfida:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 419693.

The City of Sachse (the "city"), which you represent, received a request for all incident reports from a specified location from February 1, 2011 to March 24, 2011. You state you have released some of the requested information. You have redacted Texas driver's license numbers under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ Additionally, you have redacted social security numbers under section 552.147 of the Government Code.² You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that other statutes make confidential, such as

¹We note this office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

²Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Section 58.007 provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Id. § 58.007(c). Upon review, we find report number 1100241 involves juvenile delinquent conduct occurring after September 1, 1997 and is therefore subject to section 58.007. None of the exceptions in section 58.007 appear to apply; therefore, report number 1100241 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.³

You claim report numbers 1100181, 1100190, 1100220, 1100358, 1100393, and 1100399 are excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.302(e)(1)(A). You inform us that report numbers 1100181, 1100190, 1100220, 1100358, 1100393, and 1100399 pertain to concluded criminal investigations conducted by the city's police department that did not result in conviction or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to the information at issue.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 at 186-88 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam). *See also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold report numbers 1100181, 1100190, 1100220, 1100358, 1100393, and 1100399 under section 552.108(a)(2) of the Government Code.

We note basic information includes a detailed description of the offense. *See* ORD 127 at 3-4. In this instance, some of the basic information is excepted under section 552.101 of the Government Code. Section 552.101 also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we have marked the portions of the basic information in report numbers 1100358, 1100393, and 1100399 that are highly intimate or embarrassing and of no legitimate public interest. In releasing basic information under section 552.108(c), the city must withhold the information we have marked in these reports under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold report number 1100241 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the city may withhold report numbers 1100181, 1100190, 1100220, 1100358, 1100393, and 1100399 under section 552.108(a)(2) of the Government Code. In releasing basic information for report numbers 1100358, 1100393, and 1100399, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'VB', followed by a long horizontal line extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 419693

Enc. Submitted documents

c: Requestor
(w/o enclosures)